

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Norfolk Southern Railway Company,
Petitioner,

v.

Illinois Department of Transportation, and Edwards County Road
District No. 6,
Respondents.

T00-0015

Petition to permit closing of a certain existing railroad crossing in
Edwards County, Illinois, To Wit: TR 185 (MP 130.52; DOT
#724696V); to construct an access road; and to install automatic
flashing light signals and gates with constant warning circuitry at
a certain existing railroad crossing in Edwards County, Illinois, To
Wit: TR 18 (MP 129.94; DOT #724699R).

ORDER

By the Commission:

On February 24, 2000, the Norfolk Southern Railway Company ("NS" or "Petitioner") filed its Petition with the Illinois Commerce Commission ("Commission") naming therein Edwards County Road District No. 6 ("Road District") and the Illinois Department of Transportation ("Department") as Respondents. In the interest of public safety, the NS requests an Order from the Commission requiring the closure of the Township Road ("TR") 185 crossing, the installation of automatic flashing light signals and gates controlled by constant warning time circuitry at the TR 18 crossing, and the construction of a connecting road between the TR 36 and TR 185 crossings, with the cost being allocated between the parties and the Grade Crossing Protection Fund.

This matter came on for hearing before a duly authorized Hearing Examiner of the Commission on June 6, 2000 and September 5, 2000, at the Commission's Springfield office. At the conclusion of the hearing on September 5, 2000, the matter was marked "Heard and Taken." The NS was represented by counsel at the June 6, 2000, hearing. A representative of the Road District was present and participated in the June 6, 2000, hearing. A representative of Commission's Railroad Section staff was present and participated in the June 6, 2000, and September 5, 2000, hearings.

As required by the rules and regulations of the Commission, a public notice advising of the proposed closure of the TR 185 crossing was published in the Mount Carmel Daily Republican-Register, a newspaper of general circulation, on April 6, 2000.

The NS operates over a single main line track through all three crossings. The track FRA classification is Class 4. Rail traffic on this track amounts to 21 freight train movements per day at a maximum speed of 50 mph. There are no passenger train movements on this line.

TR 18, TR 36, and TR 185 are public roadways located in and under the jurisdiction of Edwards County Road District No. 6 near the unincorporated community of Ellery in Edwards County. TR 36 extends in a north-south direction. TR 185 extends in an east-west direction. TR 18, south of the crossing, extends in north-south direction. Immediately north of the crossing, TR 18 curves to the east for several hundred feet before again extending in a north-south direction. All three crossings are located within one mile of each other (see Exhibit No. 1).

TR 185 crosses the track of the NS at an approximate 30° angle. It is a narrow, one lane gravel roadway. The highway approaches to the crossing were described as steep (reference Petitioner's Exhibit No. 2) and in the opinion of the witness, not in compliance with the criteria as set forth in the Commission's 92 IL. Adm. Code 1535.204. As shown in Petitioner's Exhibit No 2, the timber and asphalt crossing surface is in good condition. The crossing is posted with cross buck signs. The average daily traffic as compiled by the Department is 75 vehicles per day over the TR 185 crossing at a non-posted speed limit (55 mph). There have been two reported collisions at the TR 185 crossing. On March 23, 1994, a collision that resulted in one fatality and on December 26, 1997, there was a collision that resulted in two injuries. Petitioner requests permission from the Commission to close, abolish and barricade the TR 185 crossing. As shown on Petitioner's Exhibit No. 5, the cost to close and barricade the TR 185 crossing is estimated to be \$5,200. The NS states that if the Commission so orders, the cost for the closure and barricading of the TR 185 crossing will be borne 100% by the NS.

TR 36 crosses the track of the NS at an approximate 90° angle. It is a narrow, one lane roadway. As shown in Petitioner's Exhibit No. 6, the highway approaches appear to comply with Commission regulations. The timber and asphalt crossing surface is in fair condition. As shown on Petitioner's Exhibit No. 6, there are holes that have developed adjacent to the field timbers. The crossing is posted with cross buck signs. The average daily traffic as compiled by the Department is 50 vehicles per day at a non-posted speed limit (55 mph). There have been no reported accidents at the TR 36 crossing since 1955. The

NS proposes to maintain the current warning devices and crossing surface at the TR 36 crossing.

TR 18 crosses the track of the NS at an approximate 90° angle. Immediately north of the crossing, TR 18 curves to the east. It is a gravel, two lane roadway. As Shown in Petitioner's Exhibit No. 7, the highway approaches appear to comply with Commission regulations. The timber and asphalt crossing surface appears to be in good condition; however, from the photographs, it appears the crossing surface may not include the usable shoulder area as required by Commission regulations. There have been no recorded accidents at the TR 18 crossing since 1955. The crossing is posted with cross buck signs. The average daily traffic over the crossing as compiled by the Department is 100 vehicles per day at a non-posted speed limit (55 mph). The NS seeks permission from the Commission to install automatic flashing light signals and gates controlled by constant warning time circuitry at the TR 18 crossing. As shown on Petitioner's Exhibit No. 8, the estimated cost for the warning device installation is \$117,000.

Petitioner also proposes the construction of a connecting road between TR 185 and TR 36. As shown in Petitioner's Exhibit Nos. 9 and 11, the proposed connecting road will be located north of the NS track and will extend approximately 2,900 feet between TR 18 and TR 36 which will allow for the closure of the TR 185 crossing. The new roadway section will have a 24' road bed or an 18' oil and chip roadway surface with 3 foot shoulders on each side of the proposed roadway. The connecting road will have a posted speed limit of 40 mph. The estimate of cost for the connecting road, as contained in Petitioner's Exhibit No. 10, is \$66,000. In response to Staff Recommendation, the Edwards County Engineer states that the estimate as provided in Petitioner's Exhibit No. 10 was prepared prior to a survey or engineering study. This survey and study is now complete and the cost for the construction of the connecting road is now estimated to be \$118,000. The additional cost is for additional length and embankment needed to raise the roadway above the flood level in order to keep the roadway open in times of heavy rain. The County will provide a revised Statement of Proposed Road Improvement to the Department for its approval prior to the commencement of construction of the connecting road.

The Edwards County Engineer testified in favor of the project, including the construction of the connecting road. Petitioner's Group Exhibit No. 12 contains two letters in support of the NS Petition, one from the Commission of Edwards Road District No 6 and the other from the County Clerk stating that the County Commissioners are also in support the NS proposal. The County will be the agent for the Road District in the construction of the connecting road and Edwards County should be required to perform the work on behalf of Edwards County Road District No 6.

Staff of the Commission's Railroad Section is in agreement with the scope of the NS project. But, staff recommends that the TR 36 crossing also be equipped with automatic flashing light signals and gates controlled by constant warning time circuitry, that the railroad maintain its right-of-way at the TR 18 and TR 36 crossings in compliance with the requirements of the Commission's 92 IL. Adm. Code 1535.205, that the NS install a new crossing surface at the TR 36 crossing and at the TR 18 crossing if the crossing surface is not of sufficient length to cover both the roadway and any usable shoulder area, and that the Road District post advance warning signs at the TR 18 and TR 36 crossings at the location and in the manner as required by Commission regulations. The cost for the project should be divided substantially as contained in Staff's Recommendation, but with the revisions as set forth in Finding (7) herein.

A Staff Recommendation was served on the parties of this proceeding and comments received were considered herein.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- 2) the recitals of fact set forth in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact;
- 3) a system of automatic flashing light signals and gates controlled by constant warning time circuitry should be installed at both the TR 18 and TR 36 crossings;
- 4) the grade crossing of TR 185 should be closed, abolished and barricaded to vehicular traffic, said barricades to be type 3 barricade as described in the Manual on Uniform Traffic Control Devices; said crossing is not to be closed to vehicular traffic until such time as the warning devices and connecting road herein required are placed in service;
- 5) the project should be completed within one (1) year from the date of this Order;
- 6) the cost for the aforementioned improvements should be divided among the parties and the Grade Crossing Protection Fund ("Fund") of the Motor Fuel Tax Law as required by Law;

- 7) it is fair and reasonable that the Grade Crossing Protection Fund, the Norfolk Southern railway Company, and Edwards County Road District No. 6 be required to bear their respective portions of the proposed improvements costs as follows:

Improvement	Estimated Cost	GCPF	NS	Road District
Install AFLS and CWT circuitry at the TR 18 crossing	\$117,000	95% (\$111,150)	Remainder	--
Install new crossing at TR18 (if required)	No estimate	--	100%	--
Install AFLS and CWT circuitry at the TR 36 crossing	\$117,000	90% (\$105,300)	Remainder	--
Install new crossing at TR 36 (if required)	No estimate	--	100%	--
Close TR 185	\$5,200	--	100%	--
Construct connecting road between TR 36 and TR 185	\$118,000	100% (\$118,000)	--	**
Install & maintain Advance warning signs at TR 18 and TR 36	No estimate	--	--	100%
Maintain right-of-way at the TR 36 and TR 18 crossings	No estimate	--	100%	--
Total	\$357,000	\$334,450	\$22,750	**

the amount to be by the Fund shall not exceed \$111,150, \$105,300, and \$118,000 for the warning device installations at TR 18 and TR 36 and the construction of the connecting road between TR 36 and TR 185, respectively; all remaining warning device installation cost, all cost to close the TR 185 crossing, all cost to install the crossing surfaces (if required), and all cost to maintain the right-of-way at the TR 18 and TR 36 crossings shall be borne by the NS; the cost to install and maintain the advance warning signs at the TR 18 and TR 36 crossings shall be borne by the Road District; Edwards County Road District No. 6 shall bear any cost whereby 100% thereof exceeds \$118,000; and all cost of future maintenance of the connecting road after construction.

IT IS FURTHER ORDERED by the Illinois Commerce Commission that the Norfolk Southern Railway Company be, and it is hereby, required and directed to install automatic flashing light signals and gates controlled by constant warning time circuitry at its grade crossings with TR 18 and TR 36 and thereafter maintain and operate same.

IT IS FURTHER ORDERED that the TR 185 grade crossing with the track of the Norfolk and Southern Railway Company be, and it is hereby, required and directed to be closed, abolished, and barricaded to vehicular traffic, said barricades to be a type 3 barricade as described in the Manual on Uniform Traffic Control Devices.

IT IS FURTHER ORDERED that the TR 185 crossing shall not be closed until such time as the warning devices herein before required at the TR 18 and TR 36 grade crossings are placed in service.

IT IS FURTHER ORDERED that Edwards County Highway Department, on behalf of Edwards County Road District No. 6, be, and it is hereby, required and directed to construct a connecting road between TR 36 and TR 185; the County of Edwards will be the agent for the Road District and shall submit to the Illinois Department of Transportation for its approval, a revised State of Proposed Road Improvement.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company and Edwards County Road District No. 6 be, and they are hereby, required and directed to complete their work within one (1) year from the date of this Order.

IT IS FURTHER ORDERED that the cost for the aforementioned work be divided between the parties on the Grade Crossing Protection Fund of the Motor Fuel Tax Law in the manner as set forth in Finding (7), hereinabove.

IT IS FURTHER ORDERED that all bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund pertaining to the warning device installations at TR 18 and TR 36 shall be submitted to Mr. Henry Cronister, Bureau of Local Roads and Streets, Main Office of the Illinois Department of Transportation, 2300 South Dirksen Parkway, Springfield, Illinois, 62764. The Department shall send a copy of each bill received to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures from the Fund shall be clearly marked as "Final Bill." All bills shall be submitted to the Department and Commission no later than twelve (12) months from the completion date specified in this Order. The Department shall, at the end of the twelfth (12) month from the completion date specified in the Order, de-obligate all residual funds accountable for the warning device installation costs for this project.

IT IS FURTHER ORDERED that all bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund toward the construction of the connecting road shall be submitted to the District 7 Office, Illinois Department of Transportation, 400 West Wabash, Effingham, Illinois, 62401. The Department shall send a copy of each bill received to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures from the Fund shall clearly be marked as "Final Bill." All bills shall be submitted to the Department and Commission no later than twelve (12) months from the completion date specified in this Order. The Department shall, at the end of the twelfth (12) month from the completion date specified in this Order, de-obligate all residual funds accountable for the connecting road construction.

IT IS FURTHER ORDERED Norfolk Southern Railway Company shall, within one hundred twenty (120) days from the date of this Order, submit to the Illinois Department of Transportation for its approval, two (2) copies of the general layout plans and two (2) copies of the detailed estimates of cost applying to the warning device installations herein required.

IT IS FURTHER ORDERED that Edwards County Highway Department, on behalf of Edwards County Road District No. 6, shall, within one hundred twenty (120) days from the date of this Order, submit to the Illinois Department of Transportation for its approval, two (2) copies of the plans and two (2) copies of the detailed estimate of cost applying to the construction of the connecting road between TR 18 and TR 36.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, within thirty (30) days of its receipt of the aforesaid circuit and general layout plans pertaining to the warning devices installations herein required, furnish to the Commission a statement of its approval or disapproval thereof, this for the information of the Commission when considering the applications hereinafter required to be filed in accordance with Form 3 of 92 IL. Adm. Code 1535.

IT IS FURTHER ORDERED that Norfolk Southern Railway Company shall file Form 3 of 92 IL. Adm. Code 1535 of this Commission, for each crossing, showing details of the automatic warning devices herein required and shall receive approval thereof by X-Resolution before commencing the installations.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company and the Edwards County Highway Department, on behalf of Edwards County Road District No. 6, shall each file a written report within ninety (90) days from the date of this Order with the Director of Processing and Information, Transportation Division of the Commission, stating the progress it has made

toward completion of their work herein required. Said report shall include the name, title, mailing address, phone number, and facsimile number of the Company's and Road District's employee responsible for management of their portion of the project.

IT IS FURTHER ORDERED that Norfolk Southern Railway Company and the Edwards County Highway Department, on behalf of Edwards County Road District No. 6, shall each file a written report with the Director of Processing and Information, Transportation Division of the Commission, within fifteen (15) days of the conclusion of each calendar quarter, stating the status of billing to the Grade Crossing Protection Fund and the percentage of completion of the project; if the project is behind schedule, the report must include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that Norfolk Southern Railway Company shall submit to the Director of Processing and Information, Transportation Division of the Commission, within five (5) days of the completion of the work herein required of it, National Inventory Update Report Forms, one for each crossing, as a notice of said completions.

IT IS FURTHER ORDERED that Edwards County Highway Department, on behalf of Edwards County Road District No. 6 shall submit to the Director of Processing and Information, Transportation Division of the Commission, within five (5) days of the completion of the work herein required of it, a written notice of said completion.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this 20th day of September, 2000.

EXAMINER	<i>JOB</i>
SECTION CHIEF	
Supervisor of Orders	<i>JOB</i>

*Richard L. Mathias*³

Chairman